

REMARKS

The present application was filed on July 17, 2003, with claims 1-38. Claims 1-38 are currently pending in the application. Claims 1, 16, 18, 23, 25, 34, 37 and 38 are the independent claims.

Claims 1, 5, 12-14, 16, 17, 25, 28, 33 and 38 are rejected under 35 U.S.C. §103(a) as being unpatentable over European Patent Application Publication No. EP1367752 (hereinafter "Sano") in view of U.S. Patent Application Publication No. US 2004/0047296 (hereinafter "Tzannes").

Claims 2-4, 6, 26, 27, 29 and 34 are rejected under §103(a) as being unpatentable over Sano and Tzannes, further in view of U.S. Patent No. 6,522,696 (hereinafter "Mobin").

Claims 7-9, 30 and 31 are rejected under §103(a) as being unpatentable over Sano, Tzannes and Mobin, further in view of U.S. Patent No. 6,215,827 (hereinafter "Balachandran").

Claims 10 and 32 are rejected under §103(a) as being unpatentable over Sano, Tzannes and Mobin, further in view of U.S. Patent Application Publication No. 2003/0157914 (hereinafter "Li").

Claim 11 is rejected under §103(a) as being unpatentable over Sano, Tzannes and Li, further in view of Balachandran.

Claim 15 is rejected under §103(a) as being unpatentable over Sano and Tzannes, further in view of Balachandran.

Claims 18-20, 23, 24 and 37 are rejected under §103(a) as being unpatentable over Sano, Tzannes and Mobin, further in view of Balachandran.

Claims 21 and 22 are rejected under §103(a) as being unpatentable over Sano, Tzannes, Mobin and Balachandran, further in view of Li.

Claim 36 is rejected under §103(a) as being unpatentable over Sano, Tzannes, Mobin and Balachandran, further in view of U.S. Patent Application Publication No. 2005/0130595 (hereinafter "Shurvinton").

Claim 35 is allowed.

In this response, Applicants respectfully traverse the §103(a) rejections. Applicants respectfully request reconsideration of the application in view of the remarks below.

With regard to the §103(a) rejections, Applicants submit herewith a declaration of prior

invention in accordance with 37 C.F.R. §1.131. The declaration is signed by three of the four inventors named on the present application. The fourth inventor, Ra'anah Gil, is no longer employed by the assignee or a related entity and is not readily available to execute documents. The declaration and the exhibits attached thereto evidence the conception and actual reduction to practice of an invention falling within the present independent claims at least as early as March 12, 2001.

See *Ex parte Foster*, 1903 C.D. 213, 214, 105 O.G. 261 (Comm'r Pat. 1903) (cited in MPEP 715.04) ("The rule says that the inventor's affidavit will be sufficient; but it does not say that the fact may not be established in some other way. . . . The essential fact is priority of invention, and the Office may accept any satisfactory evidence of that fact. . . . Where the testimony of the inventor cannot be obtained, priority may in some cases be proved without his testimony")

Applicants respectfully note that the Tzannes reference, relied upon in the §103(a) rejections of each of claims 1-34 and 36-38, has a priority date of March 8, 2002. Applicants respectfully submit that the claims of the Tzannes reference and the claims of the present application are neither directed to the same invention nor are obvious variants of one another. Accordingly, Applicants respectfully submit that the declaration is effective to remove Tzannes as §102(e) prior art.

Applicants also note that the Li reference, relied upon in the §103(a) rejections of claims 10, 11, 21, 22 and 32, has a filing date of February 20, 2002. Applicants respectfully submit that the claims of the Li reference and the claims of the present application are neither directed to the same invention nor are obvious variants of one another. Accordingly, Applicants respectfully submit that the declaration is effective to remove Li as §102(e) prior art.

Applicants further note that the Shurvinton reference, relied upon in the §103(a) rejection of claim 36, has a priority date of March 7, 2002. Applicants respectfully submit that the claims of the Shurvinton reference and the claims of the present application are neither directed to the same invention nor are obvious variants of one another. Accordingly, Applicants respectfully submit that the declaration is effective to remove Shurvinton as §102(e) prior art.

Application Serial No. 10/621,862
Art Unit: 2611

Applicants note that the Mobin reference, relied upon in the §103(a) rejections of claims 2-4, 6-10, 18-24, 26, 27, 29-32, 34, 36 and 37, was first published when issued on February 18, 2003, which is the effective date of Mobin *under* §102(a). Applicants believe that the claims of the Mobin reference and the claims of the present application are neither directed to the same invention nor are obvious variants of one another. Accordingly, Applicants respectfully submit that the declaration is effective to remove Mobin as §102(a) prior art.

In view of the declaration, Applicants respectfully submit that Mobin qualifies as prior art only under §102(e). Applicants note that both Mobin and the present application are currently assigned of record to Agere Systems Inc. ("Agere"). Furthermore, both Mobin and the claimed invention were subject to an obligation of assignment to Agere at the time the claimed invention was made. Accordingly, Applicants respectfully submit that, pursuant to 35 U.S.C. §103(c), Mobin may not be used in a rejection under 35 U.S.C. §103(a). See "35 USC § 103(c) & CREATE Act of 2004," available at <http://www.uspto.gov/web/offices/dcom/olia/aipa/103cfaq.htm> ("if the reference is a U.S. patent or U.S. patent application publication which is prior art under 35 U.S.C. 102(a) and (e), applicant could swear behind the reference's publication date pursuant to 37 CFR 1.131 to disqualify the reference as prior art under 35 U.S.C. 102(a), and then use 35 U.S.C. 103(c) to disqualify the reference").

In view of the foregoing, claims 1-38 are believed to be in condition for allowance, and such favorable action is respectfully solicited.

Respectfully submitted,



Date: December 13, 2007

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